

ACT# 2009- 630

1 SB311  
2 106625-2  
3 By Senator Mitchem  
4 RFD: Governmental Affairs  
5 First Read: 05-FEB-09



1 SB311

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4 ENROLLED, An Act,

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To establish and support reduced cigarette ignition propensity standards; and to establish civil penalties for violations.

8

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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Section 1. This act shall be known as the "Reduced Cigarette Ignition Propensity Standards and Firefighter Protection Act."

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Section 2. As used in this act, the following terms shall have the following meanings:

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(1) AGENT. Any person authorized by the Department of Revenue to purchase and affix stamps on packages of cigarettes.

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(2) CIGARETTE. Any of the following:

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a. Any roll of tobacco wrapped in paper or in any substance not containing tobacco.

b. Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph a.

(3) MANUFACTURER. Any of the following:

1           a. Any entity which manufactures or otherwise  
2 produces cigarettes or causes cigarettes to be manufactured or  
3 produced anywhere that the manufacturer intends to be sold in  
4 this state, including cigarettes intended to be sold in the  
5 United States through an importer.

6           b. Any entity that becomes a successor of an entity  
7 described in paragraph a.

8           (4) QUALITY CONTROL AND QUALITY ASSURANCE PROGRAM.

9 The laboratory procedures implemented to ensure that operator  
10 bias, systematic and nonsystematic methodological errors, and  
11 equipment-related problems do not affect the results of the  
12 testing. The program ensures that the testing repeatability  
13 remains within the required repeatability values stated in  
14 subdivision (6) of subsection (a) of Section 3 for all test  
15 trials used to certify cigarettes in accordance with this act.

16           (5) REPEATABILITY. The range of values within which  
17 the repeat results of cigarette test trials from a single  
18 laboratory will fall 95 percent of the time.

19           (6) RETAIL DEALER. Any person, other than a  
20 manufacturer or wholesale dealer, engaged in selling  
21 cigarettes or tobacco products.

22           (7) SALE. Any transfer of title or possession, or  
23 both, exchange or barter, conditional or otherwise, in any  
24 manner or by any means whatever or any agreement therefor. In  
25 addition to cash and credit sales, the giving of cigarettes as

1 samples, prizes or gifts, and the exchanging of cigarettes for  
2 any consideration other than money, are considered sales.

3 (8) SELL. To sell or to offer or agree to do the  
4 same.

5 (9) WHOLESALE DEALER. Any person, other than a  
6 manufacturer, who sells cigarettes or tobacco products to  
7 retail dealers or other persons for purposes of resale, and  
8 any person who owns, operates, or maintains one or more  
9 cigarette or tobacco product vending machines in, at, or upon  
10 premises owned or occupied by any other person.

11 Section 3. (a) Except as provided in subsection (g),  
12 no cigarettes may be sold or offered for sale in this state or  
13 offered for sale or sold to persons located in this state  
14 unless the cigarettes have been tested in accordance with the  
15 test method and meet the performance standard specified in  
16 this section, a written certification has been filed by the  
17 manufacturer with the State Fire Marshal in accordance with  
18 Section 4, and the cigarettes have been marked in accordance  
19 with Section 5.

20 (1) Testing of cigarettes shall be conducted in  
21 accordance with the American Society of Testing and Materials  
22 (ASTM) standard E2187-04, "Standard Test Method for Measuring  
23 the Ignition Strength of Cigarettes."

24 (2) Testing shall be conducted on 10 layers of  
25 filter paper.

1           (3) No more than 25 percent of the cigarettes tested  
2 in a test trial in accordance with this section shall exhibit  
3 full-length burns. Forty replicate tests shall comprise a  
4 complete test trial for each cigarette tested.

5           (4) The performance standard required by this  
6 section shall only be applied to a complete test trial.

7           (5) Written certifications shall be based upon  
8 testing conducted by a laboratory that has been accredited  
9 pursuant to standard ISO/IEC 17025 of the International  
10 Organization for Standardization (ISO), or other comparable  
11 accreditation standard required by the State Fire Marshal.

12           (6) Laboratories conducting testing in accordance  
13 with this section shall implement a quality control and  
14 quality assurance program that includes a procedure that will  
15 determine the repeatability of the testing results. The  
16 repeatability value shall be no greater than 0.19.

17           (7) This section does not require additional testing  
18 if cigarettes are tested consistent with this act for any  
19 other purpose.

20           (8) Testing performed or sponsored by the State Fire  
21 Marshal to determine a cigarette's compliance with the  
22 performance standard required shall be conducted in accordance  
23 with this section.

24           (b) Each cigarette listed in a certification  
25 submitted pursuant to Section 4 that uses lowered permeability

1 bands in the cigarette paper to achieve compliance with the  
2 performance standard set forth in this section shall have at  
3 least two nominally identical bands on the paper surrounding  
4 the tobacco column. At least one complete band shall be  
5 located at least 15 millimeters from the lighting end of the  
6 cigarette. For cigarettes on which the bands are positioned by  
7 design, there shall be at least two bands fully located at  
8 least 15 millimeters from the lighting end and 10 millimeters  
9 from the filter end of the tobacco column, or 10 millimeters  
10 from the labeled end of the tobacco column for non-filtered  
11 cigarettes.

12 (c) A manufacturer of a cigarette that the State  
13 Fire Marshal determines cannot be tested in accordance with  
14 the test method prescribed in subdivision (1) of subsection  
15 (a) shall propose a test method and performance standard for  
16 the cigarette to the State Fire Marshal. Upon approval of the  
17 proposed test method and a determination by the State Fire  
18 Marshal that the performance standard proposed by the  
19 manufacturer is equivalent to the performance standard  
20 prescribed in subdivision (3) of subsection (a), the  
21 manufacturer may employ the test method and performance  
22 standard to certify the cigarette pursuant to Section 4. If  
23 the State Fire Marshal determines that another state has  
24 enacted reduced cigarette ignition propensity standards that  
25 include a test method and performance standard that are the

1 same as those contained in this act, and the State Fire  
2 Marshal finds that the officials responsible for implementing  
3 those requirements have approved the proposed alternative test  
4 method and performance standard for a particular cigarette  
5 proposed by a manufacturer as meeting the reduced cigarette  
6 ignition propensity standards of that state's law or  
7 regulation under a legal provision comparable to this section,  
8 then the State Fire Marshal shall authorize that manufacturer  
9 to employ the alternative test method and performance standard  
10 to certify that cigarette for sale in this state, unless the  
11 State Fire Marshal demonstrates a reasonable basis why the  
12 alternative test should not be accepted under this act. All  
13 other applicable requirements of this section shall apply to  
14 the manufacturer.

15 (d) Each manufacturer shall maintain copies of the  
16 reports of all tests conducted on all cigarettes offered for  
17 sale for a period of three years, and shall make copies of  
18 these reports available to the State Fire Marshal and the  
19 Attorney General upon written request. Any manufacturer who  
20 fails to make copies of these reports available within 60 days  
21 of receiving a written request shall be subject to a civil  
22 penalty not to exceed ten thousand dollars (\$10,000) for each  
23 day after the 60th day that the manufacturer does not make the  
24 copies available.

1           (e) The State Fire Marshal may adopt a subsequent  
2     ASTM Standard Test Method for Measuring the Ignition Strength  
3     of Cigarettes upon a finding that the subsequent method does  
4     not result in a change in the percentage of full-length burns  
5     exhibited by any tested cigarette when compared to the  
6     percentage of full-length burns the same cigarette would  
7     exhibit when tested in accordance with ASTM Standard E2187-04  
8     and the performance standard in subdivision (3) of subsection  
9     (a).

10           (f) The State Fire Marshal shall review the  
11     effectiveness of this section and report every three years to  
12     the Legislature the State Fire Marshal's findings and, if  
13     appropriate, recommendations for legislation to improve the  
14     effectiveness of this act. The report and legislative  
15     recommendations shall be submitted no later than June 30th  
16     following the conclusion of each three-year period.

17           (g) The requirements of subsection (a) shall not  
18     prohibit any of the following:

19           (1) Wholesale or retail dealers from selling their  
20     existing inventory of cigarettes on or after the effective  
21     date of this act if the wholesale or retail dealer can  
22     establish that state tax stamps were affixed to the cigarettes  
23     prior to the effective date and the wholesale or retail dealer  
24     can establish that the inventory was purchased prior to the



1 effective date in comparable quantity to the inventory  
2 purchased during the same period of the prior year.

3 (2) The sale of cigarettes solely for the purpose of  
4 consumer testing. For purposes of this subsection, the term  
5 "consumer testing" shall mean an assessment of cigarettes that  
6 is conducted by a manufacturer (or under the control and  
7 direction of a manufacturer), for the purpose of evaluating  
8 consumer acceptance of the cigarettes, utilizing only the  
9 quantity of cigarettes that is reasonably necessary for the  
10 assessment.

11 (h) This act shall be so interpreted and construed  
12 as to effectuate its general purpose to make uniform this act  
13 with the laws of those states that have enacted reduced  
14 cigarette ignition propensity laws as of the effective date of  
15 this act.

16 Section 4. (a) Each manufacturer shall submit to the  
17 State Fire Marshal a written certification attesting to each  
18 of the following:

19 (1) Each cigarette listed in the certification has  
20 been tested in accordance with Section 3.

21 (2) Each cigarette listed in the certification meets  
22 the performance standard set forth in Section 3.

23 (b) Each cigarette listed in the certification shall  
24 be described with the following information:

25 (1) Brand, or trade name on the package.

1 (2) Style, such as light or ultra light.

2 (3) Length in millimeters.

3 (4) Circumference in millimeters.

4 (5) Flavor, such as menthol or chocolate, if  
5 applicable.

6 (6) Filter or non-filter.

7 (7) Package description, such as soft pack or box.

8 (8) Marking pursuant to Section 5.

9 (9) The name, address, and telephone number of the  
10 laboratory, if different than the manufacturer that conducted  
11 the test.

12 (10) The date that the testing occurred.

13 (c) The State Fire Marshal shall make the  
14 certifications available to the Attorney General for purposes  
15 consistent with this act and the Department of Revenue for the  
16 purposes of ensuring compliance with this section.

17 (d) Each cigarette certified under this section  
18 shall be recertified every three years.

19 (e) At the time a manufacturer submits a written  
20 certification under this section, the manufacturer shall pay  
21 to the State Fire Marshal a fee of one thousand dollars  
22 (\$1,000) for each brand family of cigarettes identified in the  
23 certification. The fee paid shall apply to all cigarettes  
24 listed in the brand family identified in the certification and

1 shall include any new cigarette certified within the brand  
2 family during the three-year certification period.

3 (f) If a manufacturer has certified a cigarette  
4 pursuant to this section, and thereafter makes any change to  
5 the cigarette that is likely to alter its compliance with the  
6 reduced cigarette ignition propensity standards required by  
7 this act, that cigarette shall not be sold or offered for sale  
8 in this state until the manufacturer retests the cigarette in  
9 accordance with the testing standards set forth in Section 3  
10 and maintains records of that retesting as required by Section  
11 3. Any altered cigarette which does not meet the performance  
12 standard set forth in Section 3 may not be sold in this state.

13 Section 5. (a) Cigarettes that are certified by a  
14 manufacturer in accordance with Section 4 shall be marked to  
15 indicate compliance with the requirements of Section 3. The  
16 marking shall be in eight point type or larger and consist of  
17 the letters "FSC," which signifies Fire Standards Compliant,  
18 permanently printed, stamped, engraved, or embossed on the  
19 package at or near the UPC Code.

20 (b) A manufacturer shall use only one marking, and  
21 shall apply this marking uniformly for all packages,  
22 including, but not limited to, packs, cartons, cases, and  
23 brands marketed by that manufacturer.

24 (c) Manufacturers certifying cigarettes in  
25 accordance with Section 4 shall provide a copy of the

1       certifications to all wholesale dealers and agents to which  
2       they sell cigarettes. Wholesale dealers, agents, and retail  
3       dealers shall permit the State Fire Marshal, the Department of  
4       Revenue, the Attorney General, and their employees to inspect  
5       markings of cigarette packaging marked in accordance with this  
6       section.

7               Section 6. (a) A manufacturer, wholesale dealer,  
8       agent, or any other person or entity who knowingly sells or  
9       offers to sell cigarettes, other than through retail sale, in  
10      violation of Section 3, shall be subject to a civil penalty  
11      not to exceed one hundred dollars (\$100) for each pack of the  
12      cigarettes sold or offered for sale provided that in no case  
13      shall the penalty against a person or entity for that  
14      violation exceed one hundred thousand dollars (\$100,000)  
15      during any 30-day period.

16              (b) A retail dealer who knowingly sells or offers to  
17      sell cigarettes in violation of Section 3 shall be subject to  
18      a civil penalty not to exceed one hundred dollars (\$100) for  
19      each pack of the cigarettes sold or offered for sale, provided  
20      that in no case shall the penalty against any retail dealer  
21      exceed twenty-five thousand dollars (\$25,000) for sales or  
22      offers to sell during any 30-day period.

23              (c) In addition to any penalty prescribed by law,  
24      any corporation, partnership, sole proprietor, limited  
25      partnership, or association engaged in the manufacture of

1 cigarettes that knowingly makes a false certification pursuant  
2 to Section 4 shall be subject to a civil penalty of at least  
3 seventy-five thousand dollars (\$75,000) and not to exceed two  
4 hundred fifty thousand dollars (\$250,000) for each false  
5 certification.

6 (d) Any person violating any other provision in this  
7 act shall be subject to a civil penalty for a first offense  
8 not to exceed one thousand dollars (\$1,000), and for a  
9 subsequent offense subject to a civil penalty not to exceed  
10 five thousand dollars (\$5,000) for each violation.

11 (e) Whenever any law enforcement personnel or duly  
12 authorized representative of the State Fire Marshal shall  
13 discover any cigarettes (i) for which no certification has  
14 been filed as required by Section 4, or (ii) that have not  
15 been marked in the manner required by Section 5, such  
16 personnel is hereby authorized and empowered to seize and take  
17 possession of the cigarettes. Cigarettes seized pursuant to  
18 this section shall be destroyed, provided, however, that prior  
19 to the destruction of any cigarette seized pursuant to these  
20 provisions, the true holder of the trademark rights in the  
21 cigarette brand shall be permitted to inspect the cigarette.

22 (f) In addition to any other remedy provided by law,  
23 the Attorney General may file an action in circuit court for a  
24 violation of this act, including petitioning (i) for  
25 preliminary or permanent injunctive relief against any

1 manufacturer, importer, wholesale dealer, retail dealer,  
2 agent, or any other person or entity to enjoin such entity  
3 from selling, offering to sell, or affixing tax stamps to any  
4 cigarette that does not comply with the requirements of this  
5 act, or (ii) to recover any costs or damages suffered by the  
6 state because of a violation of this act, including  
7 enforcement costs relating to the specific violation and  
8 attorney's fees. Each violation of this act or rules adopted  
9 under this act constitutes a separate civil violation for  
10 which the State Fire Marshal or Attorney General may obtain  
11 relief. Upon obtaining judgment for injunctive relief under  
12 this section, the State Fire Marshal or Attorney General shall  
13 provide a copy of the judgment to all wholesale dealers and  
14 agents to which the cigarette has been sold.

15 Section 7. (a) The State Fire Marshal may promulgate  
16 rules pursuant to the Alabama Administrative Procedure Act  
17 necessary to effectuate the purposes of this act.

18 (b) The Department of Revenue in the regular course  
19 of conducting inspections of wholesale dealers, agents, and  
20 retail dealers, as authorized under Section 40-2-11, Code of  
21 Alabama 1975, may inspect the cigarettes to determine if the  
22 cigarettes are marked as required by Section 5. If the  
23 cigarettes are not marked as required, the Department of  
24 Revenue shall notify the State Fire Marshal.

1           Section 8. To enforce the provisions of this act,  
2 the Attorney General, the Department of Revenue, the State  
3 Fire Marshal, their duly authorized representatives, and other  
4 law enforcement personnel are hereby authorized to examine the  
5 books, papers, invoices, and other records of any person in  
6 possession, control, or occupancy of any premises where  
7 cigarettes are placed, stored, sold, or offered for sale, as  
8 well as the stock of cigarettes on the premises. Every person  
9 in the possession, control, or occupancy of any premises where  
10 cigarettes are placed, sold, or offered for sale is hereby  
11 directed and required to give the Attorney General, the  
12 Department of Revenue, the State Fire Marshal, their duly  
13 authorized representatives, and other law enforcement  
14 personnel the means, facilities, and opportunity for the  
15 examinations authorized by this section.

16           Section 9. There is hereby established in the State  
17 Treasury a special fund to be known as the "Reduced Cigarette  
18 Ignition Propensity Standards and Firefighter Protection Act  
19 Fund." The fund shall consist of all certification fees paid  
20 under Section 4 and monies recovered as penalties under  
21 Section 6. The monies shall be deposited to the credit of the  
22 fund and shall, in addition to any other monies made available  
23 for that purpose, be made available to the State Fire Marshal  
24 to support fire safety and prevention programs. All payments  
25 from the Reduced Cigarette Ignition Propensity Standards and

1 Firefighter Protection Act Fund shall be made on the audit and  
2 warrant of the state Comptroller on vouchers certified and  
3 submitted by the State Fire Marshal.

4 Section 10. Nothing in this act shall be construed  
5 to prohibit any person or entity from manufacturing or selling  
6 cigarettes that do not meet the requirements of Section 3 if  
7 the cigarettes are or will be stamped for sale in another  
8 state or are packaged for sale outside the United States and  
9 that person or entity has taken reasonable steps to ensure  
10 that the cigarettes will not be sold or offered for sale to  
11 persons located in this state.

12 Section 11. This act shall be repealed if a federal  
13 reduced cigarette ignition propensity standard that preempts  
14 this act is adopted and becomes effective.

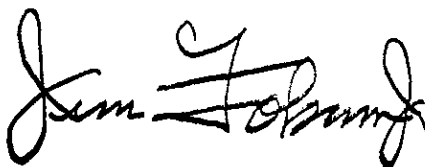
15 Section 12. This act preempts any local law,  
16 ordinance, or regulation that conflicts with any provision of  
17 this act or any policy of the state implemented in accordance  
18 with this act and, notwithstanding any other provision of law,  
19 a governmental unit of this state may not enact or enforce an  
20 ordinance, local law, or rule conflicting with or preempted by  
21 this act.

22 Section 13. This act shall become effective on  
23 January 1, 2010; provided, however, subsection (a) of Section  
24 7 and Section 12 shall become effective immediately following

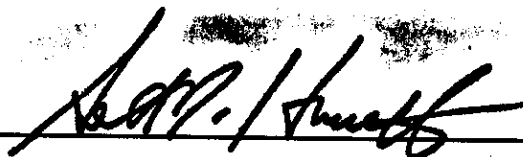


1 its passage and approval by the Governor, or its otherwise  
2 becoming law.

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President and Presiding Officer of the Senate



Speaker of the House of Representatives

SB311

Senate 17-FEB-09

I hereby certify that the within Act originated in and passed the Senate.

McDowell Lee  
Secretary

House of Representatives  
Passed: 14-MAY-09

By: Senator Mitchem

APPROVED *May 21, 2009*

TIME *7:28 a.m.*

  
GOVERNOR

Alabama Secretary Of State

Act Num....: 2009-630  
Bill Num....: S-311